

**CITY OF BRAZIL, INDIANA
ORDINANCE NO. 6-2007**

AN ORDINANCE AMENDING SECTIONS 150.30 THROUGH 150.48 OF CHAPTER 150, TITLE XV OF THE BRAZIL CODE BY AMENDING PROVISIONS OF SAID SECTIONS AND REPLACING THEM WITH PRESENT STATE REQUIREMENTS PERTAINING TO ENFORCEMENT OF BUILDING STANDARDS

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF-BRAZIL, INDIANA:

SECTION ONE

Enforcement of Building Standards

Sections 150.30 - 150.48 of Chapter 150 of Title XV of the Brazil Code be and hereby is amended by replacing and renumbering said Sections to read as follows:

ENFORCEMENT OF BUILDING STANDARDS

§150.30 PURPOSE.

The purpose of this Ordinance is for the protection of the health, welfare and safety of the public and citizens of Brazil, Indiana by adopting applicable provisions of the State Enforcement of Buildings Standards law as provided in IC 36-7-9-1 through 36-7-9-28, which provides for the enactment of an ordinance specifying procedures to remedy the existence of unsafe buildings and structures within the corporate boundaries of the City of Brazil, and provide penalties for noncompliance and violations hereof.

§150.31 DEFINITIONS.

For the purpose of this Ordinance, the terms specified below shall have the following meanings:

- (a) **“UNSAFE BUILDING OR STRUCTURE.”** Any building or structure, or any part thereof, that is (1) in an impaired structural condition that makes it unsafe to a person or property; (2) a fire hazard; (3) a hazard to the public health; (4) a public nuisance; or (5) dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or (6) vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance.
- (b) **“UNSAFE PREMISES.”** An unsafe building and the tract of real property on which the unsafe building is located.
- (c) **“KNOWN OR RECORDED FEE INTEREST, ESTATE INTEREST, OR EQUITABLE INTEREST OF A CONTRACT PURCHASER”** means any fee interest, life estate interest, or equitable interest of a contract purchaser held by a person whose identity and address may

be determined from: (1) an instrument recorded in the recorder's office of the county where the unsafe premises is located; (2) written information or actual knowledge received by the department; or (3) a review of department records that is sufficient to identify information that is reasonably ascertainable.

- (d) "KNOWN OR RECORDED PROPERTY INTEREST" means any right in real property, including a fee simple interest, a life estate interest, a future interest, mortgage interest, or an equitable interest of a contract purchaser, that (1) may be affected in a substantial way by actions authorized by this ordinance; and (2) is held by a person whose identity and address may be determined from: (A) an instrument recorded in the recorder's office of the county where the unsafe premises is located; (B) written information or actual knowledge received by the department; or (C) a review of department records that is sufficient to identify information that is reasonably ascertainable.
- (e) "SUBSTANTIAL PROPERTY INTEREST." any right in real property that may be affected in a substantial way by actions authorized by this ordinance, including a fee interest, a life estate interest, a future interest, a mortgage interest, , or an equitable interest of a contract purchaser.
- (f) "ENFORCEMENT AUTHORITY." The Building Administrator of the City of Brazil.
- (g) "HEARING AUTHORITY." The Board of Public Works and Safety of the City of Brazil.

§150.32 ORDERS; CONSENTS; NOTICE; EXPIRATION OF ORDERS.

- A. The Building Administrator as the enforcement authority may issue an order requiring action relative to any unsafe premises located in the City of Brazil, including:
 - (1) Vacating of an unsafe building;
 - (2) Sealing an unsafe building against intrusion by unauthorized persons by either locking or securing or securing all possible means of entrance, "Boarding up" of all means of entrance, installing a chain and conspicuous sign prohibiting entrance onto this unsafe premises at all possible means of entrance, or by appropriate law enforcement or fire suppression officials prohibiting access thereto;
 - (3) Extermination of vermin in and about the unsafe premises;
 - (4) Removal of trash, debris, or fire hazardous material in and about the unsafe premises;
 - (5) Repair of an unsafe building to bring it into compliance with standards for building condition or maintenance as prescribed by law;
 - (6) Removal of part of an unsafe building;
 - (7) Removal of an unsafe building;

(8) Requiring, for an unsafe building that will be sealed for a period of more than ninety (90) days:

- a. Sealing against intrusion by unauthorized persons and the effects of weather;
 - b. Exterior improvements to make the building compatible in appearance with other buildings in the area; and
 - c. Continuing maintenance and upkeep of the building and premises; in accordance with standards established by ordinance.
- B. This Order must contain (1) The name of the person to whom the Order is issued; (2) The legal description or address of the unsafe premises that are the subject of the Order; (3) the action that the Order requires; (4) The period of time in which the action is required to be accomplished, measured from the time when the notice of the Order is given; (5) If a hearing is required, a statement indicating the exact time and place of the hearing, and stating that person to whom the Order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments; (6) If a hearing is not required, a statement that an Order to seal an unsafe building against intrusion by unauthorized persons pursuant to Sub-section (A)(2) becomes final ten (10) days after notice is given, unless a hearing is requested in writing by a person holding a fee interest or life estate interest in the unsafe premises, and the request is delivered to the Building Administrator before the end of the ten day period; (7) A statement briefly indicating what action can be taken by the Building Administrator if the Order is not complied with; (8) A statement indicating the obligation created by Section 150.95 of this Ordinance relating to notification of subsequent substantial property interest holders and the Building Administrator; (9) The name, address, and telephone number of the Building Administrator as the enforcement authority.
- C. The Order must allow sufficient time, of at least ten (10) days from the time when notice of the Order is given, to accomplish the required action. If the Order allows more than thirty (30) days to accomplish the action, the Order may require that a substantial beginning be made in accomplishing the action within thirty (30) days.
- D. Notice of the Order must be given pursuant to the provisions of Section 150.30 of this Ordinance.
- E. The Order expires two (2) years from the day the notice of the Order is given, unless one or more of the following events occurs within that two (2) year period:
- (1) A complaint requesting judicial review is filed seeking emergency action pursuant to IC 36-7-9-9.
 - (2) A contract for action required by the Order is let at public bid under IC 36-7-9-11.

(3) A civil action is filed under IC 36-7-9-17.

§150.33 RECISSION AND MODIFICATION OF ORDERS; NOTICE.

- A. The Building Administrator may issue an Order that modifies or rescinds the Order previously issued pertaining to an unsafe building or unsafe premises.
- B. All persons who have been issued an Order pertaining to an unsafe building or an unsafe premises must be notified of its recission under Section 150.95 of this Order by means of a written statement including:
 - (1) The name of the person to whom the statement of recission is issued;
 - (2) The legal description or address of the unsafe premises that are the subject of the Order being rescinded;
 - (3) The substance of the Order being rescinded;
 - (4) A statement that the Order is being rescinded;
 - (5) The name, address and telephone number of the Building Administrator as the enforcement authority.
- C. If service of the Order being modified or rescinded was by publication, it is sufficient to serve the statement of modification or recission by publication, unless the Building Administrator has received information in writing that enables him to make service under Section 150.88 of this Ordinance by a method other than publication. If service of a statement of recission is by publication, the publication must include the items listed in Subsections (B)(1) through (B)(5) above.

§150.34 HEARING; PROCEDURE.

- A. A hearing must be held relative to each Order issued by the Building Administrator except for an Order issued for sealing an unsafe building against intrusion by unauthorized persons under section 150. 82(A)(2) of this Ordinance. An Order issued under Section 150. 82(A)(2) becomes final ten (10) days after notice is given, unless a hearing is requested before the ten (10) day period ends by a person holding a fee interest, life estate interest, mortgage interest, or equitable interest of a contract purchaser in the unsafe premises. The hearing shall be conducted by the Board of Public Works and Safety as the hearing authority.
- B. The hearing shall be held on a business day no earlier than ten (10) days after notice of the Order is given. The Board of Public Works and Safety may, however, take action at the hearing, or before the hearing if a written request is received by the Board not later than five (5) days after notice is given, to continue the hearing to a business day not later than fourteen (14) days after the hearing date shown on the Order. Unless the hearing authority takes action to have the continued hearing held on a definite, specified date, notice of the continued

hearing must be given to the person to whom the Order was issued at least five (5) days before the continued hearing date, in the manner prescribed by Section 150.95 of this Ordinance. If the Order being considered at the continued hearing was served by publication, it is sufficient to give notice of the continued hearing by publication unless the Building Administrator has received information in writing that enables him to make service under Section 150.95 of this Ordinance by a method other than publication.

- C. The person to whom the Order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the Order, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses, and present arguments.
- D. At the conclusion of any hearing at which a continuance is not granted, the Board of Public Works and Safety as hearing authority may make findings and take action to:
 - (1) Affirm the Order;
 - (2) Rescind the Order;
 - (3) Modify the Order, but unless the person to whom the Order was issued, or counsel for that person, is present at the hearing, the Board as hearing authority may modify the Order in only a manner that makes its terms less stringent.
- E. If, at the hearing, a person to whom an Order has been issued requests an additional period to accomplish action requested by the Order, and shows good cause for this request to be granted, the hearing authority may grant the request. However, as a condition for allowing the additional period, the hearing authority may require that the person post a performance bond to be forfeited if the action required by the Order is not completed within the additional period.
- F. The Board of Public Works and Safety shall, at a public hearing, after having given notice of the time and place of the hearing by publication in accordance with IC 5-3-1, adopt a schedule setting forth the maximum amount of performance bonds applicable to various types of ordered action. The Board shall use this schedule to fix the amount of performance bond required under Sub-Section (E) above.
- G. The record of the findings made and action taken by the presiding officer at the hearing shall be available to the public upon request. However, neither the Building Administrator nor the Board of Public Works and Safety is required to give any person notice of the findings and action.

§150.35 APPEALS.

Any action taken under Section 150.84(D) of this Ordinance is subject to review by the Circuit or Superior Court of Clay County pursuant to IC 36-7-9-8. A person requesting judicial review under this Section must file a verified complaint including the findings of fact and the action taken by the Board of Public Works and Safety as hearing authority. The complaint must be filed

within ten (10) days after the date when the action was taken. An appeal under this Section is action de novo. The Court may affirm, modify or reverse the action taken by the Board.

§150.36 EMERGENCY ACTION RECOVERY OF COSTS.

- A. If the Building Administrator finds it necessary to take emergency action concerning an unsafe premise in order to protect life, safety or property, it may take that action without issuing an order or giving notice. However, this emergency action must be limited to removing any immediate danger.
- B. The Building Administrator may recover the costs incurred by him in taking emergency action, by filing a civil action in the Circuit Court or Superior Court of Clay County against the persons who held a fee interest or a life estate interest in the unsafe premises at the time the Building Administrator found it necessary to take emergency action. The Building Administrator is not liable for the costs of this civil action.

§150.37 ACTION TO ENFORCE ORDERS.

- A. The Building Administrator may cause the action required by an Order to seal an unsafe building under Section 150. 82(A)(2) of this Ordinance to be performed by a contractor if:
 - (1) The Order has been served, in the manner prescribed by Section 150.95 of this Ordinance, on each person having a fee interest or life estate interest in the unsafe premises that are the subject of the Order;
 - (2) The Order has not been complied with;
 - (3) A hearing was not requested under Section 150. 82(B)(6) of this Ordinance, or, if a hearing was requested, the Order was affirmed at the hearing;
 - (4) The Order is not being reviewed under the appeal provisions of this Ordinance as provided for in Section 150.85.
- B. If action is being taken under this Section on the basis of an Order that was served by publication, it is sufficient to serve the statement that the Building Administrator intends to perform the work by publication, unless the Building Administrator has received information in writing that enables him to make service under Section 150.88 of this Ordinance by a method other than publication.

§150.38 PERFORMANCE OF WORK REQUIRED BY ORDERS; PROCEDURE.

- A. The Building Administrator may cause the action by an Order issued under Section 150.82 (A)(2) of this Ordinance to be performed in the following manner.
 - (1) If the work is being performed under an Order other than an Order under §150.82 (A) (2), (3), or (4) of this Ordinance, and if the cost of this work is estimated to be less than Ten Thousand Dollars (\$10,000.00), the Board of Public Works and Safety, acting through

the Building Administrator or other agent, may perform the work by means of the City's own workers and equipment owned or leased by the City. Notice of that this work is to be performed must be given to all persons with a substantial property interest, in the manner prescribed by this Ordinance at least ten (10) days before the date of performance by the Building Administrator. This notice must include a statement that an amount representing a reasonable estimate of the cost incurred by the Building Administrator in processing the matter and performing the work may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises. If the work is being performed under an order issued under Section 150.82 (2), (3), or (4) of this Ordinance, the work may be informed by a contractor who has been awarded a base bid contract to perform the work for the Building Administrator, or by the Building Administrator by other governmental agency and using the City's own workers and equipment owned or leased by the City. Work performed under an Order issued under Section 150.82(2), (3), or (4) of this Ordinance may be performed without further notice to the persons holding a fee interest, life estate interest, or equitable interest of a contract purchaser, and these persons are liable for the costs incurred by the Building Administrator in processing the matter and performing the work. Bids may be solicited and accepted for work on more than once (1) property if the bid reflects an allocation of the bid amount among the various unsafe premises in proportion to the work to be accomplished. The part of the bid amount attributable to each of the unsafe premises constitutes the basis for calculating the part of the costs of the work.

- (2) If the work is being performed under an Order other than an Order under § 150.82 (A) (2), and if the estimated costs of this work is \$10,000.00 or more, this work must be let at public bid to a contractor licensed and qualified under law. This obligation to pay costs imposed by § 150.89 is based on the condition of the unsafe premises at the time the public bid was accepted. Changes occurring in the condition of the unsafe premises after the public bid was accepted do not eliminate or diminish this obligation.
 - (3) If the work is being performed under an Order to seal an unsafe building under Section 150. 82(A)(2) of this Ordinance, the work may be performed by a contractor who has been awarded a base bid contract to seal unsafe buildings for the Building Administrator, or by the City using its own workers and equipment owned or leased by it, The unsafe building may be sealed without further notice to the persons holding a fee interest or life estate interest, and these persons are liable for the cost incurred by the Building Administrator in processing the matter and performing the work, as provided by Section 150.89 of this Ordinance.
- B. Bids may be solicited and accepted for work on more than one (1) property if the bid reflects an allocation of the bid amount among the various unsafe premises in proportion to the work to be accomplished. The part of the bid amount attributable to each of the unsafe premises constitutes the basis for calculating the part of the costs described by Section 150. 89(A)(1) of this Ordinance.

C. All persons who have a known or recorded substantial property interest in the unsafe premises and are subject to an Order other than an Order under Section 150.82(A)(2), (3), or (4) of this Ordinance must be notified about the public bid in the manner prescribed by Section 150.95 of this Ordinance, by means of a written statement including:

- (1) The name of the person to whom the Order was issued;
- (2) A legal description or address of the unsafe premises that are the subject of the Order;
- (3) A statement that the contract is to be let at public bid to a licensed contractor to accomplish work to comply with the Order;
- (4) A description of work to be accomplished;
- (5) A statement that both the bid price of the licensed contractor who accomplishes the work and amount representing a reasonable estimate of the costs incurred by the Building Administrator in processing the matter of the unsafe premises may, if not paid recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises;
- (6) The time of the bid opening;
- (7) The place of the bid opening;
- (8) The name, address and telephone number of the Building Administrator.

D. If the notice of the statement that public bids are to be let is served by publication, the publication must include the information required by Subsection (B) above, except that it need only include a general description of the work to be accomplished. The publication must also state that a copy of the statement of public bid may be obtained from the Building Administrator. Notice of the statement that public bids are to let must be given at least ten (10) days before the date of the public bid to all persons who have a known or recorded substantial property interest in the property and are subject to an order other than an order under Section 150.82(2), (3), or (4) of this Ordinance. If action is being taken on the basis of an order that was served by publication, it is sufficient to serve the statement that public bids are to be let by publication, unless the Building Administrator has received information in writing that enables the City to make notice by a method other than publication.

E. Notice of the statement that public bids are to be let must be given, at least ten (10) days before the date of the public bid, to all persons who have a substantial property interest in the property and are subject to an Order other than an Order under Section 150.82(A)(2) of this Ordinance.

F. If action is being taken under this Section on the basis of an Order that was served by publication, it is sufficient to serve the statement that public bids are to be let by publication,

unless the enforcement authority has received information in writing that enables it to make service under Section 150.95 of this Ordinance by a method other than publication.

§150.39 LIABILITY FOR COSTS.

- A. When action required by an Order is performed by the Building Administrator or by a contractor acting under Section 150.88 above, each person who held a fee interest or life estate interest in the unsafe premises from the time when the Order requiring the work performed was recorded to the time that the work was completed is jointly and severally responsible for following costs:
- (1) The actual cost of the work performed by the Building Administrator for the bid price of the work accomplished by the contractor.
 - (2) An amount that represents a reasonable forecast of the average processing expense that will be incurred by the enforcement authority in taking the technical, administrative, and legal actions concerning typical unsafe premises that are necessary under this Ordinance so that the action required by an Order may be performed by a contractor under Section 150.88 of this Ordinance. In calculating the amount of the average processing expense, the following costs may be considered:
 - (a) The cost of obtaining reliable information about the identity and location of persons who own a substantial property interest in the unsafe premises.
 - (b) The cost of notice of Orders, notice of statements of rescission, notice of continued hearing, notice of statements that public bids are to be let or that the enforcement authority intends to accomplish the work, and notice that a hearing may be held on the amounts indicated in the record, in accordance with Section 150.95 of this Ordinance.
 - (c) Salaries for employees.
 - (d) The cost of supplies, equipment and office space.
- B. The Building Administrator shall determine the amount of the average processing expense at the public hearing, after notice has been given in the same manner as is required for other official action of the Building Administrator or the Board of Public Works and Safety. In determining the average processing expense, the Building Administrator may fix the amount at a full dollar amount that is an even multiple of ten (10).

§150.40 NOTICE OF UNPAID COSTS; FILING; HEARING; JUDGMENT LIEN.

- A. If all or any part of the costs listed in Section 150.89 of this Ordinance remain unpaid for any unsafe premises other than unsafe premises owned by a governmental entity for more than fifteen (15) days after the completion of the work, and if the Building Administrator

determines that there is a reasonable probability of obtaining recovery, the Building Administrator shall prepare a record stating:

- (1) The name and last known address of each person who held a known or recorded fee interest or life estate interest in the unsafe premises from the time the Order requiring the work to be performed was recorded to the time that the work was completed;
 - (2) The legal description or address of the unsafe premises that were the subject of the work;
 - (3) The nature of the work that was accomplished;
 - (4) The amount of the unpaid bid price of the work that was accomplished;
 - (5) The amount of the unpaid average processing expense. The record must be in a form approved by the State Board of Accounts;
- B. The Building Administrator shall swear to the accuracy of the record before the Clerk of the Circuit Court and deposit the record in the Clerk's office. Notice that the record has been filed and that a hearing on the amounts indicated in the record may be held must be sent to the persons named in the record, in the manner prescribed by Section 150.95 of this Ordinance.
- (1) The persons named in the record.
 - (2) Any mortgagee that has a known or recorded substantial property interest.
- C. If, within thirty (30) days after the notice required by Sub-section (B) above, a person named in the record or a mortgagee files with the Clerk of the Circuit Court a written petition objecting to the claim for payment and requesting a hearing, the Clerk shall enter the cause on the docket of the Circuit or Superior Court as a civil action, and a hearing shall be held on the question in the matter prescribed by IC 4-21.5. However, issues that could have been determined under Section 150.85 of this Ordinance may not be entertained at the hearing. At the conclusion of the hearing, the Court shall either sustain the petition or enter a judgment against the persons named in the record for the amounts recorded or for the modified amounts pursuant to IC 36-7-9-13(c).
- D. If no petition is filed under Sub-section (C) above, the Clerk of the Circuit Court shall enter the cause on the docket of the Court and the Court shall enter a judgment for the amounts stated in the record pursuant to IC 36-7-9-13(d).
- E. A judgment under Sections (C) or (D) above, to the extent that it is not satisfied under IC 27-2-15, is a debt and a lien on all the real and personal property of the person named, or a joint and several debt and lien on the real and personal property of the persons named in the record prepared under Subsection (A) above. The lien on real property is perfected against all creditors and purchasers when the judgment is entered on the judgment docket of the court.

The lien on personal property is perfected by filing a lis pendens notice in the appropriate filing office as prescribed by the Indiana Rules of Trial Procedure.

- F. In all or any part of the costs listed in Section 150.89 of this Ordinance remain unpaid for any unsafe premises, other than unsafe premises owned by a governmental entity, for more than fifteen (15) days after completion of the work, the Building Administrator may send notice under Section 150.95 of this Ordinance to each person who held a known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises. If the notice is sent, the Building Administrator shall also send notice to any mortgagee with a known or recorded substantial property interest. The notice must require full payment of the amount owed within thirty (30) days. If full payment of the amount owed is not made less than thirty (30) days after the notice is delivered, the Building Administrator may certify the following information to the county auditor:

- (1) The name of each person who held a known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.
- (2) The description of the unsafe premises, as shown by the records of the county auditor.
- (3) The amount of the delinquent payment, including all costs described in Section 150.89 of this Ordinance.

The county auditor shall place the total amount certified under Subsection (C) above, on the tax duplicate for the affected property as a special assessment, and the total amount, including accrued interest, shall be collected as delinquent taxes are collected. Any judgment entered pursuant to this Ordinance may be certified to the auditor and collected under this Section. This subsection does not apply to the collection of an amount if the court determines that the City is not entitled to the amount.

§150.41 UNSAFE BUILDING FUND.

- A. The Building Administrator shall establish in its operating budget a fund designated as the unsafe building fund. Any balance remaining at the end of the fiscal year shall be carried over in the fund for the following year and does not revert to the general fund.
- B. Money for the unsafe building fund may be received from any source, including appropriations by local, state or federal governments, and donations. The following money shall be deposited in the fund:
- (1) Money received as payment for or settlement of obligations or judgments established under Sections 150.86 through 150.90 and any civil actions, injunctions, civil forfeitures, appointments of receiver, Court Orders authorizing performances of work, and emergency Court Orders authorizing action to make premises safe, pursuant to IC 36-7-9-17 through 36-7-9-22.
 - (2) Money received from bonds posted under Section 150.84 of this Ordinance,

- (3) Money received in satisfaction of receivers notes or certificates that were issued under IC 36-7-9-20 (appointment of receiver) and were purchased with money from the unsafe building fund.
 - (4) Money received for payment or settlement of civil penalties or fines imposed under any section of this Ordinance.
 - (5) Money received from the collection of special assessments under Section 150.90 (F)
- C. Money in the unsafe building fund may be used for the expenses incurred in carrying the purposes of this Ordinance, including:
- (1) The cost of obtaining reliable information about the identity and location of each person who owns a substantial property interest in unsafe premises;
 - (2) The cost of an examination of an unsafe building by a registered architect or registered engineer not employed by the City;
 - (3) The cost of surveys necessary to determine the location and dimensions of real property on which an unsafe building is located;
 - (4) The cost of giving notice of orders, notice of statements of rescission, notice of continued hearing, and notice of statements that public bids are to be let in the manner prescribed by Section 150.95 of this Ordinance;
 - (5) The bid price of work by a contractor under this Ordinance;
 - (6) The cost of emergency action under this Ordinance;
 - (7) The cost of notes or receivers certificates issued pursuant to this Ordinance,
 - (8) Payment of money from the unsafe building fund must be made in accordance with applicable law.

§150.42 PERFORMANCE BOND PROVISION

- A. A court acting under section 17 of this chapter may condition the granting of a period of time to accomplish the action required by an order on the posting of a performance bond that will be forfeited in the action required by the order is not completed within the period the court allows. Before granting a period of time that is conditioned on the posting of a bond, the court may require that the requesting person justify the request with a workable and financially supported plan. If the court determines that a significant amount of work must be accomplished to comply with the order, the court may require that the bond specify interim completion standards and provide that the bond is forfeited if any of these interim completion standards are not substantially met.

- B. An amount collected under subsection (A) on a forfeited bond shall be deposited in the “unsafe building fund”.

§150.43 INSPECTION WARRANTS.

- A. If the owners or those in possession of a building refuse inspection, the Building Administrator may obtain an inspection warrant from any Court Of record in the County to determine if the building is an unsafe building pursuant to I.C. 36-7-9-16. The Court shall issue the warrant subject to the following conditions:
- (1) The person seeking a warrant must establish that the building to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection that naturally includes the building, or that there is probable cause for believing that a condition, object, activity, or circumstance legally justifies a search or inspection of that building.
 - (2) An affidavit establishing one of the grounds described in subdivision (1) must be signed under oath or affirmation by the affiant,
 - (3) The Court must examine the affiant under oath or affirmation to verify the accuracy of the affidavit.
- B. The warrant is valid only if it:
- (1) Is signed by the Judge of the Court and bears the date and hour of its issuance above that signature, with the notation that the warrant is valid for only forty-eight (48) hours after its issuance;
 - (2) Describes either directly or by reference to the affidavit, the building where the search or inspection is to occur so that the executor of the warrant or owner or the possessor of the building can reasonably determine what property the warrant authorizes an inspection of;

§150.44 CIVIL REMEDIES.

The City of Brazil, acting through its Building Administrator, may bring a civil action regarding unsafe premises in the Circuit or Superior Court of Clay County pursuant to LC. 36-7-9- 17, or seek an injunction against any person that will cause an Order issued under this Ordinance to be complied with pursuant to I.C. 36-7-9-17, or seek an injunction against any person that will cause an Order issued under this Ordinance to be complied with pursuant to I.C. 36-7-9-18, a civil forfeiture for noncompliance with an ordered injunction pursuant to LC. 36-7-9-20, seek a Court Order authorizing the Building Administrator to cause action required by the Order to be performed by a contractor pursuant to I.C. 36-7-9-21, or seek an emergency Court Order authorizing action to be taken to make unsafe premises safe because of an immediate danger to health and safety of the surrounding community pursuant to LC. 36-7-9-22.

§150.45 MANNER OF SERVING NOTICE.

- A. Notice of Orders, notice of statements of rescission, notice of continued hearings, notice of a statement that public bids are to be let, and notice of claims for payment must be given by:
- (1) Sending a copy of the Order or statement by Registered or Certified Mail to the residence or place of business or employment of the person to be notified with return receipt requested;
 - (2) Delivering a copy of the Order or statement personally to the person to be notified;
 - (3) Leaving a copy of the Order or statement at the dwelling or usual place of abode of the person to be notified and sending by first class mail a copy of the order or statement to the last known address of the person to be notified.
- B. If service is not obtained by a means described in Subsection (A) above and the Building Administrator concludes that a reasonable effort has been made to obtain service, service may be made by publishing a notice of the Order of statement in accordance with LC. 5-3-1 in the County where the unsafe premises are located. However, publication may be made upon consecutive days. If service of an Order is made by publication, the publication must include the information required by Sub-section (1), (2), (4), (5), (6), (7), (9) of § 150.82 (B) of this Ordinance, and must also include a statement indicating generally what action is required by the Order and that the exact terms of the Order may be obtained from Building Administrator. The Board of Public Works and Safety may make a determination about whether on the basis of information provided. The Board of Public Works and Safety is not required to make a determination at a hearing. The Board must make the determination in writing.
- C. When service is made by any of the means described in this Section, except by mailing or by publication, the person making service must make an affidavit stating that he has made the service, the manner in which service was made, to whom the Order or statement was issued, the nature of the Order or statement, and the date of service. The affidavit must be placed on file with the Building Administrator.
- D. The date when notice of the Order or statement is considered given is as follows:
- (1) If the Order or statement is delivered personally or left at the dwelling or usual place of abode, notice is considered given on the day when the Order or statement is delivered to the person or left at the person's dwelling or usual place of abode.
 - (2) If the Order or statement is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the enforcement authority.
 - (3) Notice by publication is considered given on the date of the second day that publication was made.

E. A person with a property interest in an unsafe premises who does not:

- (1) record an instrument reflecting the interest in the Recorder's Office of the county where the unsafe premises is located;
- (2) If an instrument reflecting the interest is not recorded, provide to the city in writing the person's name and address and the location of the unsafe premises; is considered consent to reasonable action taken under this Ordinance for which notice would be required and relinquish a claim to notice under this Ordinance. The city may, for the sake of administrative convenience, publish notice under Subsection (B) at the same time notice is attempted under Subsection (A). If published notice is given as described in Subsection (B), the hearing authority shall subsequently make a determination about whether a reasonable effort has been made to obtain service by means described in Subsection (A).

A person who fails to record an instrument reflecting an interest in his unsafe premises is considered to consent to action taken under this Ordinance relative to which notice would otherwise be given.

§150.46 RECORDING OF ORDERS, STATEMENTS AND RECORDS

The Building Administrator shall record in the Office of the Clay County Recorder, Orders issued under § 150.82 or § 150.83 (A) of this Ordinance, statements of rescission issued under § 150.83 (B) of this Ordinance, statements that public bids are to be let under § 150.88 of this Ordinance. The Recorder may not charge a fee for recording these items.

§150.47 TRANSFERS OF PROPERTY BY PERSONS NOT COMPLYING WITH ORDERS.

A. A person who has been issued and has received notice of an Order relative to unsafe premises and has not complied with that Order:

- (1) Must supply full information regarding the Order to a person who takes or agrees to take a substantial property interest in the unsafe premises before transferring or agreeing to transfer that interest.
- (2) Must, within five (5) days after transferring or agreeing to transfer a substantial property interest in the unsafe premises, supply the Building Administrator with written copies of:
 - (a) The full name, address, telephone number of the person taking a substantial property interest in the unsafe premises;
 - (b) The legal instrument under which the transfer or agreement to transfer the substantial property interest is accomplished.

- B. If a judgment is obtained against the City of Brazil, the Building Administrator, the Board of Public Works and Safety, for the failure to provide notice to persons holding an interest in unsafe premises in an action taken by the City, Building Administrator, or the Board of Public Works and Safety under this Ordinance, a person who failed to comply with this Section is liable to the City for the amount of the judgment if it can be shown that the City's failure to give notice was the result of that person's failure.

§150.48 STATE STATUTE INCORPORATED BY REFERENCE

Applicable to provisions of I.C. 36-7-9-1 through 36-7-9-28 (the State Enforcement of Building Standards) that have not already been provided for in this Ordinance are hereby incorporated herein by reference and made a part of this Ordinance.

SECTION TWO

Penalties

§150.99 PENALTY

- A. If any person, firm, or corporation shall violate any of the provisions of § 150.10 through 150.46, or do any act prohibited therein, or shall fail to perform any duty lawfully enjoined, within the time prescribed by the Planning Administrator, or shall fail, neglect, or refuse to obey any lawful Order given by the Planning Administrator in connection with the provisions of those Sections, said person, firm, or corporation shall be subject to a civil penalty of \$500.00. Each day of such unlawful activity as prohibited by § 150.10 through § 150.46 shall constitute a separate offense.
- B. If a person who remains in, uses, or enters a building in violation of an Order made under § 150.80 through § 150.98; knowingly interferes with or delays the carrying out of an Order made under § 150.80 through § 150.98; knowingly obstructs, damages, or interferes with persons engaged or property used in performing any work or duty under § 150.80 through § 150.98; or, fails to comply with § 150.98, shall be subject to a civil penalty of \$500.00.
- C. IC 36-7-9-19 provides that the court may impose a civil penalty not to exceed five thousand dollars (\$5,000) against any person if the conditions of IC 36-7-9-18, regarding injunctive relief, are not met. The penalty may not be substantially less than the cost of complying with the order, unless that cost exceeds two thousand five hundred dollars (\$2,500). The effective date of the penalty may be postponed for a period of not to exceed thirty (30) days, after which the court may order the penalty reduced or stricken if it is satisfied that all work necessary to fully comply with the order has been done.
- D. Should any person violating any of the specified Sections in (A) or (B) above not pay the designated civil penalty at the Office of the Clerk-Treasurer within ten (10) days after being served with a citation, the violator shall be summoned into Court.

SECTION THREE

Repeal of Conflicting Ordinances


All Ordinances or any parts thereof previously enacted which are in conflict with the provisions of this Ordinance are hereby repealed.

SECTION FOUR

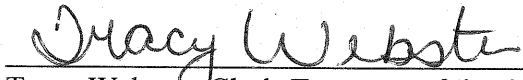
Time of Effect

This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor, and publication as required by law,

ORDAINED AND ESTABLISHED this 26 day of June, 2007.


Thomas Arthur, Mayor of the City of Brazil,
Indiana


ATTEST:

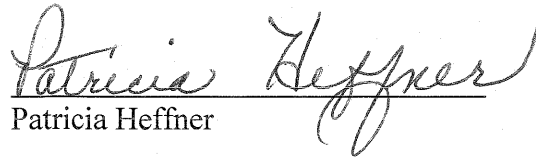

Tracy Webster, Clerk-Treasurer of the City of Brazil, Indiana

MEMBERS OF THE COMMON COUNCIL

AYES:

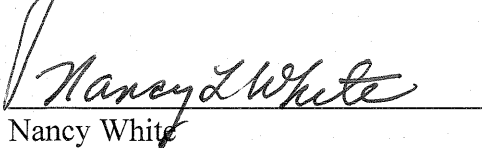
NAYS:


A. Ann Bradshaw

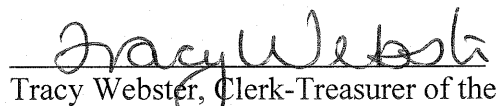

Patricia Heffner


William Lovett



James Sheese


Nancy White

Presented by me to the Mayor of the City of Brazil, Indiana for his approval and signature on this
26 day of June, 2007.


Tracy Webster, Clerk-Treasurer of the
City of Brazil

APPROVED and signed by me on the 26 day of June, 2007,
at the hour of 10:25 o'clock A.m.


Thomas Arthur, Mayor of the City of
Brazil, Indiana